

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

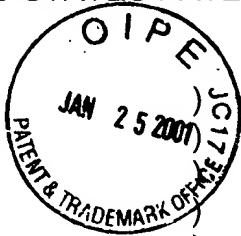
In re Application of:

Gary K. Michelson

Serial No.: 08/480,908

Filed: June 7, 1995

For: Threaded Frusto-Conical Interbody)
Spinal Fusion Implants)



Group Art Unit: 3764

Examiner: M. Brown

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OFFICE OF PETITIONS

Honorable Commissioner of Patents and Trademarks
Washington, D.C. 20231

Sir:

**PETITION UNDER 37 C.F.R. § 1.181(a)
FOR WITHDRAWAL OF IMPROPER NOTICE OF ABANDONMENT**

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Applicant respectfully petitions the Commissioner to withdraw this application from abandonment. Applicant received a Notice of Abandonment dated January 16, 2001, due to failure to respond to an Office letter mailed April 24, 2000. Applicant encloses, for the Commissioner's convenience, the following items:

1. A copy of the Reply dated March 20, 2000 in response to the Examiner's final rejection dated October 1, 1999;
2. A copy of the Request for Withdrawal of Finality with attached Exhibit A dated March 20, 2000, submitted with the Reply to Office Action above;
3. A copy of the PTO-stamped postcard receipt for items (1) and (2) above;
4. A copy of an Advisory Action dated April 24, 2000; and

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5. Declaration of Thomas H. Martin.

As stated in the attached copy of the Request for Withdrawal of Finality, the present application was filed prior to June 8, 1995 and claims priority under 35 U.S.C. § 120 to earlier filed application Serial No. 07/205,935, filed June 13, 1988, now U.S. Patent No. 5,015,247. This application has been pending for more than two years as of June 8, 1995, taking into account the above-identified claim to priority, had not been abandoned, and no Appeal Brief has been filed. Accordingly, pursuant to 37 C.F.R. § 1.129(a), Applicant is entitled to have a first submission entered and considered on the merits after final rejection.

In addition, as stated in the attached Declaration of Thomas H. Martin, a telephone conference was conducted on May 17, 2000 between the undersigned and Examiner Brown. During the telephone conference, Examiner Brown agreed to withdraw the finality of the October 1, 1999 Office Action and issue a non-final Office Action on the merits.

This Petition is being filed within two months from the action complained of pursuant to 37 C.F.R. § 1.181(f), and does not require a fee pursuant to MPEP 711.03(c)(I).

Applicant respectfully requests that the holding of abandonment be withdrawn, the finality of the Office Action dated October 1, 1999 be withdrawn, and that the Reply dated March 20, 2000 be entered and considered on the merits.

If there are any fees due in connection with the filing of this Petition, please charge the fee to our Deposit Account 50-1066.

Respectfully submitted,

MARTIN & FERRARO, LLP

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Dated: January 24, 2001

By: *Thomas H. Martin*

Thomas H. Martin

Registration No. 34,383

14500 Avion Parkway, Suite 300

Chantilly, VA 20151-1101

Telephone: (703) 679-9300

Facsimile: (703) 679-9303